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the person of another by the aggressor himself or by some substance set in motion by him, but the intended injury may be to the feelings or mind as well as to the corporeal person, and the elements of rudeness or insult may become a test of the offense.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Battery. For other cases, see 1 Va.-W. Va. Enc. Dig. 730.]

3. Words and Phrases—"Willfully" Defined.—The word "willfully" is variously defined in legal parlance and may mean, among other things, "designedly," "intentionally," or "perversely" (citing 4 Words and Phrases, Second Series, Willfully).

4. Assault and Battery (§ 48*)—Conviction Held Warranted.—Where accused knocked at door of prosecutrix and said, "Say, Mrs. M., I want to kiss a white woman; I want to see what it is like to kiss a white woman," and she replied, "No, sir," and he thereupon put his hand upon her shoulder and said, "I didn't mean to insult you," and left when she told him to get out, held, that a conviction for assault and battery was warranted.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 734.]

Error to Circuit Court, Montgomery County.

Frank Lynch was convicted of assault and battery, and brings error. Affirmed.

Harless & Calhoun, of Christiansburg, for plaintiff in error.

John R. Saunders, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *Leon M. Bazile*, Second Asst. Atty. Gen., for the Commonwealth.

POPE v. COMMONWEALTH.

Nov. 17, 1921.

[109 S. E. 429.]

1. Disorderly House (§ 17*)—Evidence Held to Show Accused Knew of Disorderly Acts.—In prosecution for keeping a disorderly house, evidence held to show that accused knew of disorderly practices on his premises.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 727.]

2. Disorderly House (§ 17*)—Evidence Held to Show Habitual Disorder on Premises.—In prosecution for keeping a disorderly house, evidence held to show, not merely a single occasion of disorder, but habitual disorderly practices.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 727.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

3. Nuisance (§ 61*)—Disorderly House “Public Nuisance.”—Generally, the fact that certain things are injurious to public morals is sufficient to render them public nuisances, and, at common law, a disorderly house is a public nuisance.

[Ed. Note.—For other definitions, see Words and Phrases, First and Second Series, Public or Common Nuisance. For other cases, see 4 Va.-W. Va. Enc. Dig. 728.]

4. Disorderly House (§ 17*)—Knowledge of Improper Practices May Be Circumstantially Proved.—Accused’s knowledge of improper practices in his establishment may be established by direct or circumstantial evidence.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 727.]

5. Disorderly House (§ 15*)—Proprietor Presumed to Know of Habitual Practices.—Actual knowledge of a proprietor of a resort of indecent and immoral practices on his premises need not be shown, in prosecution for keeping a disorderly house; it being sufficient to show such facts, such as recurrence of the practices, that knowledge would be imputed to him.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 727.]

6. Disorderly House (§ 4*)—More than a Single Act of Disorder Required.—While there must be something more shown, to support conviction of keeping a disorderly house than a single act of improper conduct, there is no particular extent of time prescribed during which the improper practices must continue or recur, or any fixed amount of recurrence of dissolute practices to constitute an establishment a disorderly house.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 727.]

7. Disorderly House (§ 15*)—Illicit Use May Support Inference of Continuous Use.—A building may be so used on a single day as to justify the inference, with but slight additional evidence, that the illicit use has been continuous; the inference being one of fact, not of law, and one to be drawn, if at all, by the trial judge in the light of the circumstances.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 727.]

8. Disorderly House (§ 17*)—Positive Proof of Actual Knowledge of Disorderly Practices Not Necessary.—In prosecution for keeping a disorderly house, an instruction that positive proof of actual knowledge of accused of the acts and doings of the women he employed was not necessary, since the law required him to use reasonable diligence to ascertain the character of such acts and doings, and that the state was required only to prove facts putting a reasonable man on notice, held not incorrect.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 727.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

9. Disorderly House (§ 4*)—"Common and Habitual Occurrence" of Disorderly Acts Defined.—In prosecution for keeping a disorderly house, an instruction that, before the acts complained of might be regarded as constituting a public nuisance, they must be of common and habitual occurrence, but that the law fixes no definite continuance of time during which such acts must occur to meet the requirements of "common and habitual occurrence," it being sufficient if they occur with such frequency and during such substantial period of time covered by the indictment, as to constitute a continuing menace to public morals, held not incorrect; for the quoted words have a flexible meaning, and are not to be so construed as to impose too weighty a burden upon society when seeking to deal with evils of this character.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 727.]

10. Criminal Law (§ 829 (1)*)—Elision from Proffered Instruction of Matter Covered Not Prejudicial.—Elision from a proffered instruction of matter as to which the jury has already been adequately instructed is not prejudicial.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 604.]

11. Criminal Law (§§ 551, 829 (3)*)—Proffered Instruction Held Properly Refused, Weight of Negative Evidence a Jury Question.—In prosecution for keeping a disorderly house, where the jury had been instructed as to necessity of common and habitual occurrence of disorderly practices, a requested instruction, that if the jury believed from the evidence that the police and various respectable citizens had visited accused's establishment prior to the night in question and had not seen any improper conduct, then, if there was improper conduct on the night in question, this was insufficient for conviction, as the improper conduct must be habitual, was properly refused, and it was for the jury to determine the value of the negative evidence of the police and various respectable citizens in view of evidence conclusively showing improper conduct on the night in question of such character as to suggest habitual occurrence.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 727.]

Error to Corporation Court of Norfolk.

John Pope was convicted of keeping a disorderly house, and brings error. Affirmed.

Tomlin & Maupin, of Norfolk, for plaintiff in error.

John R. Saunders, Atty. Gen., *J. D. Hank, Jr.*, Asst. Atty. Gen., and *Leon M. Bazile*, Second Asst. Atty. Gen., for the Commonwealth.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.